IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION NO. 22 OF 2007
IN
APPEAL FROM ORDER NO. 6 OF 2007

SHRI. VINAYAK ANANT NAVELKAR AND 3 ORS. ... Applicants

Versus

SHRI. DHANANJAY ANANT NAVELKAR ... Respondent

Mr. S. D. Lotlikar, Senior Advocate with Ms. Sapna mordekar, Advocate for the applicant.
Mr. M. B. Da Costa, Senior Advocate with Mr. J.A. Lobo, Advocate for the respondent.

Coram:- R. S. MOHITE, J.

Date:- 2nd August, 2007

P.C.

Heard both sides. This M.C.A. has been filed for stay to interim order passed by the Civil Judge, S.D., Bicholim in Civil Misce. Application No.4/2004 in inventory proceeding No.9/91. An application for temporary injunction made by the original applicant Dhananjay Navelkar, has been granted and interested party namely present appellant Vinayak Anand Navelkar has been restrained from taking fruits from the property bearing Survey No.5/1, 8/1,7/3, 7/2, 6/1, 6/2 and 152 of village Surla Navelim, Bicholim, Goa so as to facilitate Cabeca de Casal to smoothly administer the properties or listed in the list of assets. The interested party/opponent has been further restrained from representing to the public that he is owner of the said property and selling, alienating the said property through Survey No.5/1, 8/1, 9/0, 6/2 and 8/2 of the said village to any third person. The interested party namely Vinayak Navelkar has been directed to deposit all the compensation received from Timblo and Fomento as some of the assets are being utilised for mining

activities. Both the parties state that the main A.O. which has been disposed off by this Court. A.O. itself is taken for hearing.

I find from the reasons mentioned by the Civil Judge, S.D. that the ground on which he has partly granted the application for temporary injunction is that no application has been filed by the interested party for exclusion of the said property from the list of assets in terms of relevant provisions of Portuguese Civil Code. The grievance is made by the appellant that this is factually incorrect because an application for exclusion of such property was in fact made on 25.11.91. Both the parties agree that in this application dated 25.11.91, the evidence is in progress. Both the parties are agreeable that this application needs to be disposed off as expeditiously as possible. In my view, the order has been passed on factually incorrect basis. Apart from this, it appears that, the interested parties have set up the documents in order to prove that some of the properties which are mentioned in the list of assets in fact were not forming part of the assets of the deceased. The question of genuineness of documents and other supporting documents produced by the interested parties will be relevant for deciding as to whether any injunction is required to be granted. In the circumstances, A.O. disposed off with following directions.

a) The impugned judgment and order dated 13.11.2006 is quashed and set aside. The matter is remanded back to Civil Judge, S.D., Bicholim.

b) The Civil Judge, S.D., Bicholim is directed to decide Civil Misc. Application No. 4/2004 along with application dated.25.11.91 which has been filed by the interested party for deletion of the certain properties from the list of assets.

c) It is made clear that there will be no need to lead separate evidence for deciding Civil Misc. Application No.4/2004 and the same may be

disposed off on prima facie findings on the basis of evidence which has been recorded in the application dated 25.11.91.

d) The Civil Judge, S.D., Bicholim is directed to dispose off both these application i.e. application dated 25.11.91 and Civil Misc. Application No.4/2004 as expeditiously as possible and in any case not later on 60 days from the date of receipt of copy of this order.

e) In the meantime, it is ordered that till the disposal of both these applications, the present appellants will not sell, alienate, transfer, part with possession or create any third party interest in respect of properties bearing new survey No.5/1, 8/1, 9/0, 6/2 and 8/2 of village Surla, Bicholim, Goa, or any part thereof.

f) Civil application as well as Appeal from order stands disposed off finally.

R. S. MOHITE, J.

SMA